STATE OF NEW YORK

6418

2023-2024 Regular Sessions

IN SENATE

April 19, 2023

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Internet and Technology

AN ACT to amend the general business law and the executive law, in relation to the regulation of social media companies and social media platforms

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new article 9-D to read as follows:

ARTICLE 9-D

NEW YORK SOCIAL MEDIA REGULATION ACT

Section 149-c. Definitions.

149-d. Age requirements for use of social media platform; parental consent.

149-e. Prohibitions on data collection for certain accounts.

149-f. Parental access to social media account.

149-g. Limited hours of access for minors; parental access and options.

149-h. Enforcement.

149-i. Private right of action.

§ 149-c. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Account holder" means a person who has, or opens, an account or profile to use a social media company's platform.

2. "Division" means the consumer protection division established pursuant to section ninety-four-a of the executive law.

3. "Educational entity" means a public school, a local education agency, a charter school, a private school, a denominational school, a parochial school, a community college, a state university, a city university, or a nonprofit private postsecondary educational institution.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10823-01-3

4. (a) "Interactive computer service" means an information service, information system, or information access software provider that:

(i) provides or enables computer access by multiple users to a computer server; and

(ii) provides access to the internet.

(b) "Interactive computer service" shall include:

(i) a web service;

(ii) a web system;

(iii) a website;

(iv) a web application; or

(v) a web portal.

5. "Minor" means an individual who is under the age of eighteen years old and:

(a) has not been emancipated; or

(b) has not been married.

6. "Post" means content that an account holder makes available on a social media platform for other account holders or users to view.

7. "Social media company" means a person or entity that:

(a) provides a social media platform that has at least five million account holders worldwide; and

(b) is an interactive computer service.

8. (a) "Social media platform" means an online forum that a social media company makes available for an account holder to:

(i) create a profile;

(ii) upload posts;

(iii) view the posts of other account holders; and

(iv) interact with other account holders or users.

(b) "Social media platform" shall not include an online service, website, or application:

(i) where the predominant or exclusive function is:

(A) electronic mail;

(B) direct messaging consisting of text, photos, or videos that are sent between devices by electronic means, where messages are shared between the recipient, only visible to the sender and the recipient and are not posted publicly;

(C) a streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service;

(D) news, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content;

(E) online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews, the ability to display lists or collections of goods for sale or wish lists or other functions that are focused on online shopping or electronic commerce rather than interaction between users or account holders;

(F) interactive gaming, virtual gaming, or an online service, that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content;

(G) photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting;

(H) a professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic;

(I) single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content;

(J) providing career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services;

(K) business to business software;

(L) a teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication;

(M) cloud storage;

(N) shared document collaboration;

(O) cloud computing services, which may include cloud storage and shared document collaboration;

(P) providing access to or interacting with data visualization platforms, libraries, or hubs;

(Q) to permit comments on a digital news website, if the news content is posted only by the provider of the digital news website;

(R) providing or obtaining technical support for a platform, product, or service;

(S) academic or scholarly research; or

(T) genealogical research;

(ii) where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content;

(iii) that is a classified ad service that only permits the sale of goods and prohibits the solicitation of personal services; or

(iv) that is used by and under the direction of an educational entity, including but not limited to:

(A) a learning management system;

(B) a student engagement program; and

(C) a subject or skill-specific program.

9. "User" means a person who has access to view all, or some of, the posts on a social media platform, but is not an account holder.

10. "New York state account holder" means a person who is a resident of the state of New York and an account holder, and shall include a New York state minor account holder.

11. "New York state minor account holder" means a New York account holder who is a minor.

§ 149-d. Age requirements for use of social media platform; parental consent. 1. A social media company may not permit a New York state resident who is a minor to be an account holder on such social media company's social media platform unless such New York state resident has the express consent of a parent or guardian.

2. Notwithstanding any provision of law to the contrary, a social media company may not permit a New York state resident who is a minor to hold or open an account on a social media platform if such minor is ineligible to hold or open an account under any other provision of state or federal law.

3. (a) Beginning March first, two thousand twenty-four, a social media company shall verify the age of an existing or new New York state account holder and, if the existing or new account holder is a minor,

confirm that such minor has consent as required pursuant to subdivision one of this section for:

(i) a new account, at the time such New York state resident opens the account; or

(ii) a New York state account holder who has not provided age verification as required under this section, within fourteen calendar days of the New York state account holder's attempt to access the account.

(b) If a New York state account holder fails to meet the verification requirements of this section within the required time period, the social media company shall deny access to the account:

(i) upon the expiration of the required time period; and

(ii) until all verification requirements are met.

4. In accordance with section ninety-four-a of the executive law, the division shall make rules to:

(a) establish processes or means by which a social media company may meet the age verification requirements of this article;

(b) establish acceptable forms or methods of identification, which may include but not be limited to a valid identification card issued by a government entity;

(c) establish requirements for providing confirmation of the receipt of any information provided by a person seeking to verify age under this article;

(d) establish processes or means to confirm that a parent or guardian has provided consent for the minor to open or use an account as required under this section;

(e) establish requirements for retaining, protecting, and securely disposing of any information obtained by a social media company or its agent as a result of compliance with the requirements of this article;

(f) require that information obtained by a social media company or its agent in order to comply with the requirements of this article are only retained for the purpose of compliance and may not be used for any other purpose;

(g) if the division permits an agent to process verification requirements required by this section, require that such agent have its principal place of business in the United States of America;

(h) require other applicable state agencies to comply with any rules promulgated under the authority of this section; and

(i) ensure that the rules are consistent with state and federal law.

§ 149-e. Prohibitions on data collection for certain accounts. Beginning March first, two thousand twenty-four, a social media company, for a social media platform account held by a New York state minor account holder:

1. shall prohibit direct messaging between the account and any other user that is not linked to the account through friending;

2. may not show the account in search results for any user that is not linked to the account through friending;

3. shall prohibit the display of any advertising in the account;

4. shall not collect or use any personal information from the posts, content, messages, text, or usage activities of the account other than information that is necessary to comply with, and to verify compliance with, state or federal law, which information shall include a parent or guardian's name, a birth date, and any other information required to be submitted under this section; and

5. shall prohibit the use of targeted or suggested groups, services, products, posts, accounts, or users in the account.

§ 149-f. Parental access to social media account. Beginning March first, two thousand twenty-four, a social media company shall provide a parent or guardian who has given parental consent for a New York state minor account holder pursuant to section one hundred forty-nine-d of this article with a password or other means for such parent or guardian to access such account, which shall allow such parent or guardian to view:

1. all posts the New York state minor account holder makes under the social media platform account; and

2. all responses and messages sent to or by the New York state minor account holder in the social media platform account.

§ 149-g. Limited hours of access for minors; parental access and options. 1. Beginning March first, two thousand twenty-four, a social media company shall prohibit a New York state minor account holder from having access to the New York state minor account holder's account during the hours of 10:30 p.m. to 6:30 a.m., unless the access is modified according to another requirement of this section.

2. Time of day under this section shall be calculated based on the internet protocol address being used by the New York state minor account holder at the time of attempting access.

3. A social media company shall provide options for a parent or guardian with access to an account under section one hundred forty-nine-f of this article to:

(a) change or eliminate the time-of-day restriction described in subdivision one of this section; and

(b) set a limit on the number of hours per day that a New York state minor account holder may use the account.

4. A social media company shall not permit a New York state minor account holder to change or bypass restrictions on access as required by this section.

5. Notwithstanding any provision of this section, a social media company shall permit a parent or guardian with access to an account pursuant to section one hundred forty-nine-f of this article to access the account without time restrictions.

§ 149-h. Enforcement. 1. The attorney general, upon request, shall provide legal advice to, and act as counsel for, the division in the exercise of the division's duties pursuant to this article.

2. (a) Subject to the ability to cure an alleged violation as set forth in subdivision three of this section, the division:

(i) may impose an administrative fine of up to twenty-five hundred dollars for each violation of this article; and

(ii) the division may bring an action in a court of competent jurisdiction to enforce any provision of this article.

(b) In a court action brought by the division pursuant to subparagraph (ii) of paragraph (a) of this subdivision, a court may:

(i) declare that the act in question violates a provision of this article;

(ii) issue an injunction for any violation of this article;

(iii) impose a civil penalty of up to twenty-five hundred dollars for each violation of this article;

(iv) award actual damages to an injured party; and

(v) award any other relief that the court deems reasonable and necessary.

3. (a) At least thirty days before the day on which the division initiates an enforcement action against a person that is subject to the

requirements of this article, the division shall provide such person with:

(i) written notice that identifies each alleged violation; and

(ii) an explanation of the basis for each allegation;

(b) Except as provided in paragraph (c) of this subdivision, the division may not initiate an action if the person:

(i) cures the noticed violation or violations within thirty days after the day which such person receives notice pursuant to paragraph (a) of this subdivision; and

(ii) provides the division with a written statement that states that such person has cured the violation or violations and no further violation will occur.

(c) The division may initiate a civil action against a person that:

(i) fails to cure a violation after receiving the notice pursuant to paragraph (a) of this subdivision; or

(ii) after curing a noticed violation and providing a written statement in accordance with paragraph (b) of this subdivision, commits another violation of the same provision.

4. If a court of competent jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:

(a) reasonable attorneys' fees;

(b) court costs; and

(c) investigative fees.

5. (a) A person who violates an administrative or court order issued for a violation of this article shall be subject to a civil penalty of no more than five thousand dollars for each violation.

(b) A civil penalty authorized under this section may be imposed in any civil action brought by the division, or by the attorney general on behalf of the division.

6. All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the consumer protection account established pursuant to section ninety-seven-www of the state finance law.

§ 149-i. Private right of action. 1. A person may bring an action against a person that does not comply with the provisions of this article in a court of competent jurisdiction.

2. If a court finds that a person has violated a provision of this article, the person who brings an action under this section shall be entitled to:

(a) an award of reasonable attorneys' fees and court costs; and

(b) an amount equal to the greater of:

(i) twenty-five hundred dollars per each incident of violation; or

(ii) actual damages for financial, physical, and emotional harm incurred by the person bringing the action, if the court determines that the harm is a direct consequence of the violation or violations.

§ 2. Subparagraphs 15 and 16 of paragraph (a) of subdivision 3 of section 94-a of the executive law, subparagraph 15 as amended and subparagraph 16 as added by chapter 374 of the laws of 2022, are amended and a new subparagraph 17 is added to read as follows:

(15) create an internet website or webpage pursuant to section three hundred ninety-c of the general business law, as added by chapter five hundred nine of the laws of two thousand seven; [~~and~~]

(16) exercise such powers and duties granted to the secretary by article sixteen of the energy law as the secretary may direct, including, but not limited to: consult with such president of the New York state energy research and development authority in connection with investi-

gations conducted by such president pursuant to article sixteen of the energy law; make determinations relating to compliance by products with the standards adopted pursuant to article sixteen of the energy law; order the immediate cessation of any distribution, sale or offer for sale, import, or installation of any product that does not meet such standards; and impose civil penalties as contemplated by article sixteen of the energy law[~~.~~]; and

(17) exercise such powers and duties granted to the division by article nine-D of the general business law as the secretary may direct, including, but not limited to:

(i) receiving consumer complaints alleging a violation of article nine-D of the general business law; and

(ii) investigating consumer complaints to determine whether a violation of article nine-D of the general business law has occurred.

§ 3. Subdivision 5 of section 94-a of the executive law is amended by adding a new paragraph (c) to read as follows:

(c) No later than one year from the effective date of this section, and annually thereafter, the secretary shall furnish to the governor, the speaker of the assembly and the temporary president of the senate a report:

(i) evaluating the liability and enforcement provisions of article nine-D of the general business law, including the effectiveness of the consumer protection division's efforts to enforce article nine-D of the general business law;

(ii) summarizing the consumer interactions that are protected and not protected by article nine-D of the general business law, including a list of alleged violations the consumer protection division has received; and

(iii) an accounting of:

(1) all administrative fines and civil penalties assessed under article nine-D of the general business law during the year;

(2) all administrative fines and civil penalties collected under article nine-D of the general business law during the year; and

(3) summarizing how funds received from fines and penalties under article nine-D of the general business law that were placed in the consumer protection account established pursuant to section ninety-seven-www of the state finance law were used.

§ 4. Severability. If any item, clause, sentence, subparagraph, subdivision, section or other part of this act, or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this act, or the application of such section or part of a section held invalid, to any other person or circumstances, but shall be confined in its operation to the item, clause, sentence, subparagraph, subdivision, section or other part of this act directly involved in such holding, or to the person and circumstances therein involved.

§ 5. This act shall take effect December 31, 2023. Effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.